by the plaintiff affecting a contract other than that which was the foundation of the plaintiff's complaint. The effect, if any existed, on the contract upon which the complaint was founded, was in none of the cases the foundation of the counterclaim. In the principal case, no legal connection appears to exist between the contract set forth in the complaint and the misrepresentations made by the plaintiff. The counterclaim, then, seems to fall outside the test referred to above. It likewise would appear to fall outside a test laid down in two other New York cases, that if the counterclaim is good, the plaintiff's cause of action must be a good counterclaim to the defendant's cause of action if set forth in an original complaint. *Xenia Bank* v. *Lee,* 7 Abb. 372; *Adams* v. *Schwartz,* 137 N. Y. App. Div. 230.

CONSTITUTIONAL LAW—STATUTE GIVING EMPLOYEE OF RAILWAY CORPORATION THE RIGHT TO BE HEARD BEFORE BEING DISCHARGED.—A proposed statute (Mass. Senate Document No. 537) prohibiting railway corporations, under penalty, to discharge an employee upon information concerning his conduct without first giving such employee a right to state his case in the presence of the informant, *held,* unconstitutional as depriving railway corporations of liberty and property without due process of law, and as denying employers and employees equal protection of the laws. *In re Opinion of the Justices* (Mass. 1915), 108 N. E. 807.

The court here adopts the view that the term "liberty" as used in the fourteenth amendment includes more than mere freedom from restraint, but extends to freedom to choose one's occupation, method of conducting that pursuit, and the making of all contracts necessary for carrying it on. The right to employ or discharge, with or without cause, where no civil contract binds the parties, is incident to the right. To compel the employer, therefore, to continue an employee in his service, because of inability or refusal to grant the latter a hearing, deprives him of his constitutional liberty. It is also suggested by the court that the term "property" includes the right to make and terminate contracts as the individual may think necessary to attain his greatest prosperity. A second general objection to the proposed statute is based on the clause guaranteeing to all persons the equal protection of the laws. There is nothing in the inherent nature of the business of railway corporations, as contrasted with the business of other common carriers, or other corporations, or other employers, that would be a just ground for a statute imposing this restriction only on the former. To place this requirement on railway corporations, at the same time permitting other employers to discharge their labor at will, is an unreasonable discrimination. While a like statute has never before been passed upon by the courts, the principle of the instant case is one followed by the courts in reference to legislation somewhat akin. Thus in the cases of *Adair* v. *United States,* 208 U. S. 161, 52 L. Ed. 436, 13 Ann. Cas. 764, and *Coppage* v. *Kansas,* 236 U. S. 1, 35 Sup. Ct. 240, quoted in the opinion, *Gillespie* v. *People,* 188 Ill. 176, 58 N. E. 1007, and *State* v. *Bateman,* 7 Ohio N. P. 487, the courts have held statutes making it unlawful to discharge an employee because of membership in a trade union to deprive employers of liberty and property. So statutes requiring

the employer to give to a discharged employee a statement showing the true cause of his discharge have been held to deprive employers of liberty and to abridge the right of free speech. *Atchison, Topeka, etc. Railway Co.* v. *Brown,* 80 Kan. 312, 102 Pac. 459, 23 L. R. A. (N. S.) 247; *Wallace* v. *Georgia, Carolina, etc. Railway Co.,* 94 Ga. 732, 22 S. E. 579. But for a contrary holding see the later case of *St. Louis, Southwestern Railway Co.* v. *Hixon,* (Tex. Civ. App.) 126 S. W. 338. A statute requiring certain employers to pay wages weekly was held unconstitutional in *Braceville Coal Co.* v. *People,* 147 Ill. 66, but held a constitutional exercise of the police power in *Re House Bill No. 1230,* 163 Mass. 589, 40 N. E. 713, 28 L. R. A. 344. See also the discussion of this type of legislation in *Holden* v. *Hardy,* 169 U. S. 366. The doctrine of equal protection as applied in the principal case is expressed and discussed in *Conolly* v. *Union Sewer Pipe Co.,* 184 U. S. 540, 22 Sup. Ct. 431, 46 L. Ed. 679; *Gulf, Colorado and Santa Fe Railroad Co.* v. *Ellis,* 165 U. S. 150, 17 Sup. Ct. 255, 41 L. Ed. 666; *Sutton* v. *State,* 96 Tenn. 696, 36 S. W. 697, 33 L. R. A. 589. The court, following some of the authorities above cited, might perhaps have held this statute constitutional as a necessary protection to labor. That the legislature had good reason, in view of existing industrial conditions, to deem such protection necessary to the welfare of the community is not impossible. But the doctrine of *Coppage* v. *Kansas,* above, and *Adair* v. *United States,* above, seems strongly to have influenced the mind of the court. For comment on those cases see 13 MICH. L. REV. 497.

CONTRACTS—ANTICIPATORY BREACH OF CONTRACT OF SALE.—Defendant ordered of plaintiff a traction engine. After acceptance of the order, but before the time fixed for delivery, defendant cancelled the order. Plaintiff refused to accept the cancellation and despite defendant's express repudiation of the contract and declaration that he would not accept or pay for the machine, proceeded to ship it to defendant and tender it. Upon defendant's continued refusal to accept it, plaintiff left the engine at defendant's farm, and sued for the purchase price and freight. *Held,* Plaintiff cannot recover for increased damages incurred after notice of repudiation of this executory contract of sale. The notice of repudiation breached the contract. Hence plaintiff cannot recover the freight charges on the machine. That part of *Stanford* v. *McGill,* 6 N. D. 536 72 N. W. 938, 38 L. R. A. 760, which rejects the doctrine of anticipatory breach is overruled. *Hart-Parr Co.* v. *Finley* (N. D. 1915), 153 N. W. 137.

The court points out that it could base its decision upon the principle laid down in *Collins* v. *Delaporte,* 115 Mass. 159, that "a party to an executory contract may stop the performance by an explicit order, and will subject himself only to such damages as will compensate the other party for being deprived of its benefits," which is unquestioned law even in those jurisdictions which reject the doctrine of anticipatory breach. 9 CYC. 339. Recognizing, however, the inconsistency involved in holding that a party to an executory contract must stop performance upon notice of repudiation by the other party, and at the same time rejecting the doctrine of anticipatory breach by saying that such notice of repudiation does not breach the contract, the